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 STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

US BANK NATIONAL
 ASSOCIATION, AS TRUSTEE
 FOR BEAR STEARNS ARM
 TRUST, MORTGAGE PASS-
 THROUGH CERTIFICATES,
 SERIES 2005-10,

vs.

ALFRED SILVA;
 and DOES 1 to 10, Inclusive,

Defendants.

CASE NO. 5:13-cv-00364-PSG

MAG. JUDGE: PAUL S. GREWAL

**NOTICE OF MOTION AND MOTION TO
 REMAND OF PLAINTIFF US BANK NATIONAL
 ASSOCIATION, AS TRUSTEE FOR BEAR
 STEARNS ARM TRUST, MORTGAGE PASS-
 THROUGH CERTIFICATES, SERIES 2005-10;
 MEMORANDUM OF POINTS AND
 AUTHORITIES; DECLARATION OF
 MICHAEL L. WITHEM**

Date: March 18, 2013

Time: 10:00 a.m.

Ctrm: 5, 4th Floor

UD Complaint Filed: September 27, 2012
 Action Removed to this Court: January 25, 2013

TO DEFENDANT PAUL FARAH, ACTING IN PRO PER:

PLEASE TAKE NOTICE that on March 18, 2013 at 10:00 a.m. or as soon thereafter as the
 matter may be heard in Courtroom 5, 4th Floor, of the above-entitled court located at 280 South 1st Street,
 San Jose, CA 95113, Plaintiff US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR
 STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10
 (hereinafter referred to as "US BANK") will, and hereby does, move for an Order that this action be
 remanded to State Court, 28 U.S.C. §1447(c).

As set out in the accompanying Memorandum of Points and Authorities, remand is appropriate in this case because the Court lacks subject matter jurisdiction. Defendant and Removing Party PAUL FARAH first appeared in the Unlawful Detainer Action by filing a Demurrer to the Unlawful Detainer Complaint on or about November 7, 2012. The Notice of Removal was filed on January 25, 2013, three (3) days before the unlawful detainer trial was set to take place, on January 28, 2012.

In an effort to comply with the meet and confer requirements, on January 30, 2013, Michael L. Withem called the phone number that is on the Removal of Defendant PAUL FARAH in the subject matter, 408-921-7736, and spoke with Defendant PAUL FARAH. At that time, Mr. Withem advised Mr. FARAH that the removal was improper and requested his voluntary cooperation to stipulate to remand the matter immediately back to State Court. Defendant FARAH indicated that he would not agree to same, refusing to voluntarily remand said matter back to State Court. (*Please see* meet and confer letter attached to the Declaration of Michael L. Withem as Exhibit E, confirming said conversation).

This Motion is based on the Notice, and the accompanying Memorandum of Points and Authorities, all pleadings and papers on file in this action, and such other matter as may be presented to the Court at the time of the hearing.

Any opposition must be filed and served not more than 14 days after the Motion was filed. Fed. R. Civ. P. 6(d) does not apply and thus does not extend this deadline. However, by this Local Rule, the Court extends by 3 days the deadline to file an opposition to a motion if the motion was not filed and served through the Court's Electronic Case Filing (ECF) system and was served pursuant to Fed. R. Civ. P. 5(b)(2)(C), (D), (E) or (F). The reply to an opposition must be filed and served not more than 7 days after the opposition was due.

1. STATEMENT OF FACTS

Plaintiff US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10 ("Plaintiff") obtained record title to and the right to possession of the subject real residential property and improvements thereon commonly known as 16224 Paradise Valley, Morgan Hill, CA 95037 ("Property") following a non-judicial sale validly held in accordance with *California Civil Code* §§ 2924 et. seq., particulars of

1 which are as follows:

- 2 A. That former owners and borrowers PAUL FARAH and DEBORAH J. FARAH executed
3 a Deed of Trust recorded August 5, 2005, in the Santa Clara County Recorder's Office
4 as Instrument No. 18510737, which encumbered the Property.
- 5 B. That on or about June 1, 2012, US BANK NATIONAL ASSOCIATION, AS TRUSTEE
6 FOR BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH
7 CERTIFICATES, SERIES 2005-10 acquired title to the Property at a Trustee's Sale
8 following foreclosure proceedings, and perfected its title as reflected in the duly recorded
9 Trustee's Deed Upon Sale, recorded on June 7, 2012 as Instrument No. 21700188 in the
10 Santa Clara County Recorder's Office, a true and correct copy of which is attached to the
11 Declaration of Michael L. Withem as Exhibit A.
- 12 C. That title to the Property is and was perfected in Plaintiff on June 7, 2012, the date the
13 subject Trustee's Deed Upon Sale was recorded.
- 14 D. That Plaintiff US BANK is the owner of, and in such capacity, is entitled to immediate
15 possession of the real property located within the jurisdictional boundaries of, the above-
16 entitled Court in Santa Clara County, California, more particularly described as 16224
17 Paradise Valley, Morgan Hill, CA 95037. Plaintiff US BANK is informed and believes
18 and thereon alleges that each Defendant is the former owner or is a month-to-month
19 tenant of the former owner(s) who may be subject to the Federal Protecting Tenants at
20 Foreclosure Act (PTFA), and remains in possession of the Property.
- 21 E. That on June 24, 2012, in the manner provided by law, Plaintiff caused to be served on
22 the Defendant, a Ninety-Day Notice to Quit and Notice to Any Renters at the Property
23 stating that Plaintiff had purchased the Property and that its title had been duly perfected
24 and demanding that Defendant and all those occupying the Property, quit and deliver up
25 possession of the Property to Plaintiff within ninety days after service of said Notice.
- 26 F. That the notice period expired on September 25, 2012, since that date, Plaintiff
27 is and has been entitled to immediate possession of the Property. Defendant has
28

1 failed and refused to surrender possession of the Property to Plaintiff within or
2 since the notice period, and continues to occupy the Property without Plaintiff's
3 authorization or consent.

4 G. That on September 27, 2012, Plaintiff filed a Complaint for Unlawful Detainer in
5 the Santa Clara County Superior Court as *US Bank National Association, as*
6 *Trustee for Bear Stearns ARM Trust, Mortgage Pass-Through Certificates,*
7 *Series 2005-10 v. Alfred Silva; and Does 1-10, Inclusive*, Santa Clara Superior
8 Court Case No. 512CV007164. (Exhibit B to the Declaration of Michael L.
9 Withem).

10 H. That Defendant and Removing Party PAUL FARAH appeared in the subject Unlawful
11 Detainer Action by serving a Demurrer to the Unlawful Detainer Complaint on or about
12 November 7, 2012. A true and correct copy of the first page of said Demurrer, filed in
13 State Court by Defendant PAUL FARAH is attached to the Declaration of Michael L.
14 Withem as Exhibit C.

15 I. That the Demurrer was heard on December 3, 2012 and overruled, and the Defendant and
16 Removing Party FARAH was ordered to file an Answer to the Unlawful Detainer
17 Complaint, which he filed on or about December 7, 2012.

18 J. That the unlawful detainer action was first set for trial on December 17, 2012 but was
19 continued to January 28, 2013 due to Defendant FARAH'S filing of a Chapter 7
20 Bankruptcy on or about December 14, 2012, U.S. Bankruptcy Court, Northern District
21 of California, Case No. 12-58843 SLJ 7. FARAH'S bankruptcy was then dismissed by
22 Order of the Court on December 31, 2012. A true and correct copy of the Order and
23 Notice of Dismissal for Failure to Comply is attached to the Declaration of Michael L.
24 Withem as Exhibit D.

25 K. That on January 25, 2012, three (3) days before the scheduled, continued trial date of
26 January 28, 2013, Defendant and Removing Party PAUL FARAH removed the subject
27 matter to Federal Court.

28 ///

2. **LEGAL STANDARD**

The Federal Court must have original jurisdiction, either by subject matter or by diversity of citizenship, over the civil action to be removed, pursuant to 28 U.S.C. §1441. Because diversity jurisdiction is not at issue in the instant case, this Court has jurisdiction over the instant case provided that it arises, pursuant to 28 U.S.C. §1331, under the federal law that creates the cause of action, or the “vindication of a right under state law necessarily turns on some construction of federal law.” *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1. 8-9 (1983) (emphasis added).

Federal question jurisdiction extends to those cases in which a well-pleaded complaint establishes that: (1) federal law creates the cause of action; or (2) the plaintiff’s right to relief necessarily depends on a resolution of a substantial question of federal law. *Franchise Tax Board*, 463 U.S. 1. 27-28 (1983). The presence or absence of federal question jurisdiction is governed by the well-pleaded complaint rule, which provides that federal question jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002). The existence of a defense based upon federal law, however, is insufficient to support jurisdiction, even if both parties agree that the federal defense is the only question truly at issue. *Wayne*, 294 F.3d at 1183. The plaintiff is the “master of the claim” and may avoid federal jurisdiction by relying exclusively on state law. *Abada v. Charles Schwab & Co.*, 300 F.3d 1112, 1118 (9th Cir. 2002).

The party seeking removal bears the burden of establishing federal jurisdiction. Further, the removal statute is strictly construed against removal. *Prize Frize Inc. v. Matrix Inc.*, 167 F.3d 1261, 1265 (9th Cir. 1999). Because “federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance,” there is a strong presumption in favor of remanding the case back to State Court. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

The propriety of the removal is determined solely on the basis of pleadings filed in state court, i.e., by looking “to the complaint at the time the removal petition was filed.” *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1065 (9th Cir. 1979). It is well-established that “removability cannot be created by defendant pleading a counter-claim presenting a federal question.” *Takeda v. Northwestern National Life Insurance Co.*, 765 F.2d 815, 822 (9th Cir. 1985) quoting *Rath packing Co. v. Becker*, 530

1 F.2d 1295, 1303 (9th Cir. 1975).

2 In addition, Plaintiff's Complaint for Unlawful Detainer contains no federal question.
3 Irrespective of defense or counterclaim that Defendant now wishes to raise does not create a federal
4 question whatsoever.

5
6 **3. THE REMOVAL OF THIS MATTER WAS NOT TIMELY AND, HENCE, IS**
7 **IMPROPER**

8 Defendant's Notice of Removal was not timely. It was filed with this Court, on January 25,
9 2013, approximately 2 ½ months after Defendant and Removing Party PAUL FARAH first appeared
10 in the Unlawful Detainer Action. A Defendant desiring to remove a civil action must file in the District
11 Court a timely notice of removal, containing a short and plain statement of the grounds for removal
12 together with a copy of all process, pleadings, and orders served upon them or heard in the instant action.
13 28 U.S.C. § 1446(a). The deadline for filing a notice of removal is 30 days after receipt by the
14 Defendants through service or otherwise of a copy of the initial pleading setting forth a claim for relief
15 on which the action or pleading is based, or within 30 days after service of the summons if that initial
16 pleading has been filed in the court and is not required to be served by the Defendants. 28 U.S.C. §
17 1446(b). The 30-day time period starts to run from the Defendant's receipt of the initial pleading when
18 the pleading affirmatively on its face states facts necessary for federal court jurisdiction. *Harris v.*
19 *Bankers Life and Casualty Co.* (9th Cir. 2005) 425 F 3d 689, 690. On September 27, 2012, Plaintiff filed
20 a Complaint for Unlawful Detainer in the Santa Clara Superior Court as *US Bank National Association,*
21 *as Trustee for Bear Stearns ARM Trust, Mortgage Pass-Through Certificates, Series 2005-10 v. Alfred*
22 *Silva; and Does 1-10, Inclusive*, Santa Clara Superior Court Case No. 512CV007164. Defendant and
23 Removing Party PAUL FARAH first appeared in the subject Unlawful Detainer Action by filing a
24 Demurrer to the Unlawful Detainer Complaint on or about November 7, 2012. A true and correct copy
25 of the first page of the Demurrer served by Defendant in the Unlawful Detainer action is attached to the
26 Declaration of Michael L. Withem as Exhibit C. Defendant thus appeared in the Unlawful Detainer
27 action over 2 ½ months prior to filing the Notice of Removal.

28 ///

1 **4. CONCLUSION**

2 For the reasons stated above, the Court lacks subject matter jurisdiction in this case and removal
3 was not timely or proper. Plaintiff's Motion for Remand should be granted.

4
5 DATED: January 30, 2013

ROSENTHAL, WITHEM & ZEFF

6
7 BY 

MICHAEL L. WITHEM

Attorneys for Plaintiff,

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
BEAR STEARNS ARM TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2005-10

DECLARATION OF MICHAEL L. WITHEM IN SUPPORT OF NOTICE

MOTION FOR REMAND OF PLAINTIFF US BANK

I, Michael L. Withem, declare as follows:

1. I am an attorney at law duly licensed to practice law before all the Courts in the State of California, the subject United States District Court, and am a partner in the Law Firm of Rosenthal, Withem & Zeff, counsel of record for US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10 ("US BANK").
2. I make this declaration in support of the subject Motion of US BANK to remand the subject matter back to State Court.
3. I have personal knowledge of each of the matters stated herein, and if called as a witness, could and would competently testify thereto.
4. Former owners and borrowers PAUL FARAH and DEBORAH J. FARAH executed a Deed of Trust recorded August 5, 2005, in the Santa Clara County Recorder's Office as Instrument No. 18510737, which encumbered the Property.
5. On or about June 1, 2012, US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10 acquired title to the Property at a Trustee's Sale following foreclosure proceedings, and perfected its title as reflected in the duly recorded Trustee's Deed Upon Sale, recorded on June 7, 2012 as Instrument No. 21700188 in the Santa Clara County Recorder's Office, a true and correct copy is attached hereto as Exhibit A to the Declaration of Michael L. Withem.
6. Title to the Property is and was perfected in Plaintiff on June 7, 2012, the date the subject Trustee's Deed Upon Sale was recorded.
7. Plaintiff US BANK is the owner of, and in such capacity, is entitled to immediate possession of the real property located within the jurisdictional boundaries of, the above-entitled Court in Santa Clara County, California, more particularly described as 16224 Paradise Valley, Morgan Hill, CA 95037. Plaintiff US BANK is informed and believes

and thereon alleges that each Defendant is the former owner or is a month-to-month tenant of the former owner(s) who may be subject to the Federal Protecting Tenants at Foreclosure Act (PTFA), and remains in possession of the Property.

8. On June 24, 2012, in the manner provided by law, Plaintiff caused to be served on the Defendant, a Ninety-Day Notice to Quit and Notice to Any Renters at the Property stating that Plaintiff had purchased the Property and that its title had been duly perfected and demanding that Defendant and all those occupying the Property, quit and deliver up possession of the Property to Plaintiff within ninety days after service of said Notice.

9. The notice period expired on September 25, 2012, since that date, Plaintiff is and has been entitled to immediate possession of the Property. Defendant has failed and refused to surrender possession of the Property to Plaintiff within or since the notice period, and continues to occupy the Property without Plaintiff's authorization or consent.

10. On September 27, 2012, Plaintiff filed a Complaint for Unlawful Detainer in the Santa Clara County Superior Court as *US Bank National Association, as Trustee for Bear Stearns ARM Trust, Mortgage Pass-Through Certificates, Series 2005-10 v. Alfred Silva; and Does 1-10, Inclusive*, Santa Clara Superior Court Case No. 512CV007164. A true and correct copy of said Unlawful Detainer Complaint is attached hereto as Exhibit B to the Declaration of Michael L. Withem.

11. Defendant and Removing Party PAUL FARAH appeared in the subject Unlawful Detainer Action by serving a Demurrer to the Unlawful Detainer Complaint on or about November 7, 2012. A true and correct copy of the first page of said Demurrer, filed in State Court by Defendant PAUL FARAH is attached to the Declaration of Michael L. Withem as Exhibit C.

12. The Demurrer was heard on December 3, 2012 and overruled, and the Defendant and Removing Party FARAH was ordered to file an Answer to the Unlawful Detainer Complaint, which he filed on or about December 7, 2012.

13. The unlawful detainer action was first set for trial on December 17, 2012 but was continued to January 28, 2013 due to Defendant FARAH'S filing of a Chapter 7 Bankruptcy on or about December 14, 2012, U.S. Bankruptcy Court, Northern District of California, Case No. 12-58843 SLJ 7. FARAH'S bankruptcy was then dismissed by Order of the Court on December 31, 2012. A true and correct copy of the Order and Notice of Dismissal for Failure to Comply is attached to the Declaration of Michael L. Withem as Exhibit D.

14. On January 25, 2012, three (3) days before the scheduled, continued trial date of January 28, 2013, Defendant and Removing Party PAUL FARAH removed the subject matter to Federal Court.

15. In an effort to comply with the meet and confer requirements, on January 30, 2013, Michael L. Withem called the phone number that is on the Removal of Defendant PAUL FARAH in the subject matter, 408-921-7736, and spoke with Defendant PAUL FARAH. At that time, Mr. Withem advised Mr. FARAH that the removal was improper and requested his voluntary cooperation to stipulate to remand the matter immediately back to State Court. Defendant FARAH indicated that he would not agree to same, refusing to voluntarily remand said matter back to State Court. Attached hereto, as Exhibit E, is a true and correct copy of the meet and confer letter mailed to Defendant JAMMAL, confirming said conversation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of January 2013, at Encino, California.

California.

MICHAEL L. WITHEM, Declarant

EXHIBIT A

DOCUMENT: 21700188

Pages: 4



Fees	24 00
Taxes	
Copies	
AMT PAID	24 00

2
Recording Requested By
First American Trustee Servicing Solutions, LLC

When Recorded & Mail Tax Statements To :
Wells Fargo Home Mortgage
3476 Stateview Blvd
Fort Mill SC 29715

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Recording Service

RDE # 007
6/07/2012
8:21 AM

APN: 776-26-028, 776-26-045
Property Address 16224 PARADISE VALLEY COURT
MORGAN HILL CA

Title Order # 5925951
TS Number CA1100235401
Loan Type Conventional
Case #

TRUSTEES DEED UPON SALE

The undersigned grantor declares under penalty of perjury

- 1) The grantee herein WAS the foreclosing Beneficiary
- 2) The amount of the unpaid debt together with costs was..... \$ 1,477,429.42
- 3) The amount paid by the Grantee at the trustee sale was..... \$ 1,477,429.42
- 4) The documentary transfer tax is \$ 0 - Exempt

5) Said property is ~~INCORPORATED~~ / UNINCORPORATED

First American Trustee Servicing Solutions, LLC , (herein called Trustee), as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without warranty, expressed or implied to :

US Bank National Association, as Trustee for Bear Stearns ARM Trust, Mortgage Pass-Through Certificates, Series 2005-10

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of SANTA CLARA in the State of California, described as follows :

See Exhibit A attached hereto and made a part hereof.

Recitals :

This conveyance is made pursuant to the powers conferred upon the Trustee by that certain Deed of Trust dated 07/29/2005 and executed by ,

PAUL FARAH AND DEBORAH J. FARAH, HUSBAND AND WIFE

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY
T.S.

APN Number : 776-26-028, 776-26-045
 Title Order Number : 5925951
 TS Number : CA1100235401
 Loan Type : Conventional

as Trustor, and recorded 08/05/2005, as Instrument No. 18510737, in Book , Page , of Official Records of SANTA CLARA County, California, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance..

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the County Recorder of said County.

All requirements of law and the applicable Deed of Trust including, but not limited to those enumerated by Civil Code 2924, et. seq., regarding the mailing, publication, personal delivery and posting of the Notice of Default and Notice of Sale, as respectively appropriate, have been met.

Said property was sold by said Trustee at public auction on 06/01/2012 at the place named in the Notice of Sale, in the County of SANTA CLARA in the State of California, in which the property is situated. Grantee, being the highest bidder at such sale, became the purchaser of said property and paid therefore to said Trustee the amount of \$1,477,429.42 in lawful money of the United States, or by the satisfaction, pro tanto, of the obligation then secured by said Deed of Trust

Date : JUN 04 2012

First American Trustee Servicing Solutions, LLC

By :

Robert Bourne

, Trustee Officer

State of Texas
 County of Tarrant

Before me Tammy Rossum, a Notary Public, on this day personally appeared

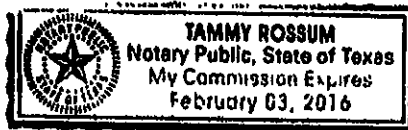
Robert Bourne, known to me to be the person whose name is subscribed to therefore going instrument and acknowledged to me that this person executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this day of 6/4/2012

Witness my hand and official seal

Signature

Tammy Rossum



APN Number : 776-26-028, 776-26-045
Title Order Number : 5925951
TS Number : CA1100235401
Loan Type : Conventional

Exhibit A

Legal Description

PARCEL ONE:

PORTION OF LOT 7, MAP OF CATHERINE DUNNE RANCH MAP NO. 2, FILED MAY 11, 1894 IN BOOK H OF MAPS, AT PAGE(S) 62 AND 63, SANTA CLARA COUNTY RECORDS, AS FOLLOWS:

BEGINNING AT A 3/4 INCH PIPE AT THE MOST NORTHWESTERLY CORNER OF PARCEL A, AS SHOWN UPON THE RECORD OF SURVEY RECORDED IN BOOK 212 OF MAPS, PAGE 16; THENCE SOUTH 26° 35' EAST 330.48 FEET TO A POINT IN THE DIVIDING LINE BETWEEN LOTS 6 AND 7; THENCE ALONG THE SAID DIVIDING LINE SOUTH 63° 25' WEST 254.94 FEET; THENCE NORTH 26° 35' WEST 350.48 FEET TO A POINT IN THE DIVIDING LINE BETWEEN LOTS 7 AND 8; THENCE ALONG SAID DIVIDING LINE NORTH 63° 25' EAST 254.94 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING APPROXIMATELY 1.93 ACRES MORE OR LESS.

PARCEL TWO:

AN UNDIVIDED 1/5 INTEREST IN AND TO THE FOLLOWING:

PORTION OF LOT 8, MAP OF CATHERINE DUNNE RANCH MAP NO. 2, FILED MAY 11, 1894 IN BOOK H OF MAPS, AT PAGE(S) 62 AND 63 SANTA CLARA COUNTY RECORDS, AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE COMMON LOT LINE BETWEEN LOT 7 AND 8 WITH THE CENTER LINE OF OAK GLEN AVENUE AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "CATHERINE DUNNE RANCH MAP NO. 2", RECORDED IN BOOK "H" OF MAPS, AT PAGE 62 AND 63, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 63° 25' WEST 983.45 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 26° 35' WEST 316.26 FEET; THENCE SOUTH 63° 25' WEST 40.00 FEET; THENCE SOUTH 26° 35' EAST 316.26 FEET; THENCE NORTH 63° 25' EAST 40.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL THREE:

A 40 FOOT WIDE ACCESS AND UTILITY EASEMENT, THE NORTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

PORTION OF LOT 7, MAP OF CATHERINE DUNNE RANCH MAP NO. 2, FILED MAY 11, 1894 IN BOOK H OF MAPS, AT PAGE(S) 62 AND 63 SANTA CLARA COUNTY RECORDS, AS FOLLOWS;

BEGINNING AT A 3/4 INCH PIPE AT THE MOST NORTHWESTERLY CORNER OF PARCEL A, AS SHOWN UPON THE RECORD OF SURVEY RECORDED IN BOOK 212 OF MAPS, PAGE 16,

THENCE SOUTH 63° 25' WEST 764.82 FEET, ALONG THE DIVIDING LINE BETWEEN LOTS 7 AND 8 TO THE TERMINUS.

EXCEPTING THEREFROM:

THAT PORTION LYING WITHIN PARCEL ONE ABOVE.

EXHIBIT B

Michael D. Zeff, State Bar #78685
ROSENTHAL, WITHEM & ZEFF
16027 Ventura Blvd., Suite 320
Encino, California 91436
(818) 789-7711

Attorney for Plaintiff
US BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR BEAR STEARNS ARM
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-10

FILED

SEP 27 2012

Deputy Clerk
County of Santa Clara
By: N. Miles Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR BEAR STEARNS ARM
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-10,

Plaintiff,

vs.

ALFRED SILVA; and Does 1 to 10, Inclusive,

Defendants.

Case No.: 512CV007164

COMPLAINT FOR UNLAWFUL DETAINER
[CCP § 1161a (b) (3), (c), 1161b (a), 1166;
FEDERAL PROTECTING TENANTS AT
FORECLOSURE ACT]

LIMITED CIVIL CASE

AMOUNT DEMANDED DOES NOT EXCEED
\$10,000.00

PLAINTIFF, US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR STEARNS
ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10 alleges as
follows:

I.

FIRST CAUSE OF ACTION FOR UNLAWFUL DETAINER

(Against All Defendants)

1. That at all times mentioned herein, Plaintiff US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH

- 1 CERTIFICATES, SERIES 2005-10 (hereinafter "Plaintiff") was and is a Corporation,
 2 authorized to conduct business within the County of Santa Clara, State of California.
- 3 2. Plaintiff is informed and believes and upon such information and belief alleges that
 4 Defendant ALFRED SILVA (hereinafter "Defendant") at all times herein mentioned was,
 5 and currently is, an individual residing in the City of Morgan Hill, County of Santa Clara,
 6 State of California.
- 7 3. The true names and capacities of Defendants sued herein as Does 1 to 10, Inclusive,
 8 are unknown to Plaintiff, who therefore sues these Defendants by such
 9 fictitious names, and will amend this Complaint to allege their true names and capacities
 10 when the same is ascertained. Plaintiff is informed and believes and thereon alleges
 11 that each such "Doe" Defendant is in possession of the real property described in
 12 Paragraph 4 below without the permission or consent of Plaintiff, and that each such
 13 Doe Defendant claims a right under the named Defendants to possession of the real
 14 property against Plaintiff.
- 15 4. Plaintiff is the owner of, and in such capacity, is entitled to immediate possession of the
 16 real property located within the jurisdictional boundaries of, the above-entitled Court in
 17 Santa Clara County, California, more particularly described as 16224 Paradise Valley
 18 Court, Morgan Hill, CA 95037 (hereinafter "the Property"). Plaintiff is informed and
 19 believes and thereon alleges that each Defendant is the former owner or is a month-to-
 20 month tenant of the former owner(s) who may be subject to the Federal Protecting
 21 Tenants at Foreclosure Act (PTFA), and remains in possession of the Property.
- 22 5. On or about June 1, 2012, Plaintiff acquired title to the Property at a Trustee's Sale
 23 following foreclosure proceedings and perfected its title as reflected in the duly recorded
 24 Trustee's Deed Upon Sale, a true and correct copy of which is attached hereto as
 25 Exhibit "1" and incorporated herein by reference.
- 26 6. On June 24, 2012, in the manner provided by law, Plaintiff caused to be served on the
 27 Defendants, and each of them, a Ninety-Day Notice to Quit and Notice to Any Renters
 28 at the Property stating that Plaintiff had purchased the Property and that its title had

1 been duly perfected and demanding that Defendant and all those occupying the
 2 Property, quit and deliver up possession of the Property to Plaintiff within ninety days
 3 after service of said Notice. True and correct copies of said Notices and Declaration of
 4 service thereof are attached hereto collectively as Exhibit "2" and incorporated herein by
 5 reference.

6 7. The notice period expired on September 25, 2012, and since that date Plaintiff has been
 7 and is entitled to immediate possession of the Property.

8 8. Defendants, and each of them, failed and refused to deliver up possession within the
 9 notice period and continue in possession of the Property without Plaintiff's permission or
 10 consent.

11 9. The reasonable value of the use and occupancy of the Property is a sum not less than
 12 \$100.00 per day, the true amount of same to be proven at trial. Defendant's unlawful
 13 detention of the Property commenced on September 25, 2012 and will continue to
 14 accrue at a sum not less than \$100.00 per day until time of Judgment.

15 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

16 1. For restitution and possession of the Property;
 17 2. For damages for the unlawful detention of the Property in a sum not less than \$100.00
 18 per day through the date of Judgment herein, to be proven at trial, for each day that
 19 Defendant continues in possession of the Property;

20 3. For costs of suit incurred herein;

21 4. For such other and further relief as the Court may deem just and proper; and

22 5. Plaintiff waives all damages in excess of the jurisdictional limit of this Court.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Dated: September 25, 2012

ROSENTHAL, WITHEM & ZEFF

2
3 By: 

4 MICHAEL D. ZEFF, ESQ.

5 Attorney for Plaintiff

6 US BANK NATIONAL ASSOCIATION, AS
7 TRUSTEE FOR BEAR STEARNS ARM
8 TRUST, MORTGAGE PASS-THROUGH
9 CERTIFICATES, SERIES 2005-10

10 File No.: 12-742

DOCUMENT: 21700188

Pages: 4



Fees	24 00
Taxes	
Copies	
AMT PAID	24 00

Recording Requested By
First American Trustee Servicing Solutions, LLC

When Recorded & Mail Tax Statements To :
Wells Fargo Home Mortgage
3476 Stateview Blvd
Fort Mill SC 29715

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Recording Service

RDE # 007
6/07/2012
8:21 AM

APN: 776-26-028, 776-26-045
Property Address 16224 PARADISE VALLEY COURT
MORGAN HILL CA
Title Order # 5925951
TS Number CA1100235401
Loan Type Conventional
Case #

TRUSTEES DEED UPON SALE

The undersigned grantor declares under penalty of perjury

- 1) The grantee herein WAS the foreclosing Beneficiary
- 2) The amount of the unpaid debt together with costs was..... \$ 1,477,429.42
- 3) The amount paid by the Grantee at the trustee sale was..... \$ 1,477,429.42
- 4) The documentary transfer tax is \$ 0 - Exempt

- 5) Said property is ~~INCORPORATED~~ / UNINCORPORATED

First American Trustee Servicing Solutions, LLC, (herein called Trustee), as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without warranty, expressed or implied to:

US Bank National Association, as Trustee for Bear Stearns ARM Trust, Mortgage Pass-Through Certificates, Series 2005-10

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of SANTA CLARA in the State of California, described as follows:

See Exhibit A attached hereto and made a part hereof.

Recitals:

This conveyance is made pursuant to the powers conferred upon the Trustee by that certain Deed of Trust dated 07/29/2005 and executed by,

PAUL FARAH AND DEBORAH J. FARAH, HUSBAND AND WIFE

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY
T.S.

APN Number : 776-26-028, 776-26-045
 Title Order Number : 5925951
 TS Number : CA1100235401
 Loan Type : Conventional

as Trustor, and recorded 08/05/2005, as Instrument No. 18510737, in Book , Page , of Official Records of SANTA CLARA County, California, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance..

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the County Recorder of said County.

All requirements of law and the applicable Deed of Trust including, but not limited to those enumerated by Civil Code 2924, et. seq., regarding the mailing, publication, personal delivery and posting of the Notice of Default and Notice of Sale, as respectively appropriate, have been met.

Said property was sold by said Trustee at public auction on 06/01/2012 at the place named in the Notice of Sale, in the County of SANTA CLARA in the State of California, in which the property is situated. Grantee, being the highest bidder at such sale, became the purchaser of said property and paid therefore to said Trustee the amount of \$1,477,429.42 in lawful money of the United States, or by the satisfaction, pro tanto, of the obligation then secured by said Deed of Trust

Date : JUN 04 2012

First American Trustee Servicing Solutions, LLC

By :

Robert Bourne

, Trustee Officer

State of Texas

County of Tarrant

Before me Tammy Rossum, a Notary Public, on this day personally appeared

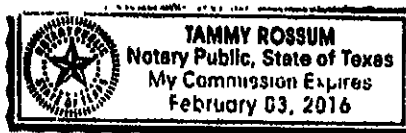
Robert Bourne, known to me to be the person whose name is subscribed to therefore going instrument and acknowledged to me that this person executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this day of 6/4/2012

Witness my hand and official seal

Signature

Tammy Rossum



APN Number : 776-26-028, 776-26-045
Title Order Number : 5925951
TS Number : CA1100235401
Loan Type : Conventional

Exhibit A

Legal Description

PARCEL ONE:

PORTION OF LOT 7, MAP OF CATHERINE DUNNE RANCH MAP NO. 2, FILED MAY 11, 1894 IN BOOK H OF MAPS, AT PAGE(S) 62 AND 63, SANTA CLARA COUNTY RECORDS, AS FOLLOWS:

BEGINNING AT A 3/4 INCH PIPE AT THE MOST NORTHWESTERLY CORNER OF PARCEL A, AS SHOWN UPON THE RECORD OF SURVEY RECORDED IN BOOK 212 OF MAPS, PAGE 16; THENCE SOUTH 26° 35' EAST 330.48 FEET TO A POINT IN THE DIVIDING LINE BETWEEN LOTS 6 AND 7; THENCE ALONG THE SAID DIVIDING LINE SOUTH 63° 25' WEST 254.94 FEET; THENCE NORTH 26° 35' WEST 350.48 FEET TO A POINT IN THE DIVIDING LINE BETWEEN LOTS 7 AND 8; THENCE ALONG SAID DIVIDING LINE NORTH 63° 25' EAST 254.94 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING APPROXIMATELY 1.93 ACRES MORE OR LESS.

PARCEL TWO:

AN UNDIVIDED 1/5 INTEREST IN AND TO THE FOLLOWING:

PORTION OF LOT 8, MAP OF CATHERINE DUNNE RANCH MAP NO. 2, FILED MAY 11, 1894 IN BOOK H OF MAPS, AT PAGE(S) 62 AND 63 SANTA CLARA COUNTY RECORDS, AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE COMMON LOT LINE BETWEEN LOT 7 AND 8 WITH THE CENTER LINE OF OAK GLEN AVENUE AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "CATHERINE DUNNE RANCH MAP NO. 2", RECORDED IN BOOK "H" OF MAPS, AT PAGE 62 AND 63, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 63° 25' WEST 983.45 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 26° 35' WEST 316.26 FEET; THENCE SOUTH 63° 25' WEST 40.00 FEET; THENCE SOUTH 26° 35' EAST 316.26 FEET; THENCE NORTH 63° 25' EAST 40.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL THREE:

A 40 FOOT WIDE ACCESS AND UTILITY EASEMENT, THE NORTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

PORTION OF LOT 7, MAP OF CATHERINE DUNNE RANCH MAP NO. 2, FILED MAY 11, 1894 IN BOOK H OF MAPS, AT PAGE(S) 62 AND 63 SANTA CLARA COUNTY RECORDS, AS FOLLOWS;

BEGINNING AT A 3/4 INCH PIPE AT THE MOST NORTHWESTERLY CORNER OF PARCEL A, AS SHOWN UPON THE RECORD OF SURVEY RECORDED IN BOOK 212 OF MAPS, PAGE 16,

THENCE SOUTH 63° 25' WEST 764.82 FEET, ALONG THE DIVIDING LINE BETWEEN LOTS 7 AND 8 TO THE TERMINUS.

EXCEPTING THEREFROM:

THAT PORTION LYING WITHIN PARCEL ONE ABOVE.

LAW OFFICES

ROSENTHAL, WITHEM & ZEFF

18027 VENTURA BOULEVARD, SUITE 320
ENCINO, CALIFORNIA 91438-2733

ROBERT LYNN ROSENTHAL
MICHAEL L. WITHEM
MICHAEL D. ZEFF

(818) 789-7711
Fax (818) 988-3875
www.RosenthalZeff.com

THREE/SIXTY/NINETY DAY NOTICE TO ALL OCCUPANTS TO QUIT PREMISES
[California Code of Civil Procedure Sections 1161a (b) (3), 1161a(c), 1161b;
and Protecting Tenants at Foreclosure Act of 2009]

**TO: ALFRED SILVA; AND ALL OTHER PERSONS WHO ARE IN POSSESSION OF AND
OCCUPY THE REAL PROPERTY LOCATED AT:**

**16224 PARADISE VALLEY COURT
MORGAN HILL, CA 95037**

NOTICE IS HEREBY GIVEN that your right to occupy the real property at the above address has been terminated as a result of the purchase of said property by US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10 by Trustee's Sale following foreclosure proceedings, and title has been duly perfected.

NOTICE IS FURTHER GIVEN that if you are a former trustor or owner of the above property, or if you claim possession under such former trustor or owner, at the expiration of THREE (3) DAYS, commencing on June 21, 2012, or THREE (3) DAYS after service of this notice upon you, whichever date is later, you are required to deliver up possession of the property to the undersigned as attorney for the purchaser of the property at the address indicated above.

PLEASE TAKE NOTE THAT if you are occupying the above referenced property as a "bona fide" month-to-month tenant, then you have 90 days commencing June 21, 2012 or 90 days following service of this Notice, whichever date is later, in which to vacate the above property. The "Protecting Tenants at Foreclosure Act" defines a "bona fide" tenant as one who:

- a. Entered into the lease with the landlord before the date of the Trustee's Sale; and
- b. Is not the former owner or the child, spouse or parent of the former owner; and
- c. Entered into the lease as a result of an arms-length transaction; and
- d. Whose rent is not substantially less than fair market rent for the property, or whose rent is reduced or subsidized due to Federal, State or local subsidy.

If you are a "bona fide" tenant and your lease term ends after 90 days from the date of service of this Notice, you may have the right to continue to occupy the property until the lease expires. Please contact the undersigned immediately at (818) 789-7711 so that arrangements may be made for US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10 to assume your lease and for you to continue paying rent.

If you are a tenant, but not a "bona fide" tenant as defined above, then the above provisions do not apply to you, and you will have 60 days from the date of service of this Notice to vacate the property.

PLEASE BE ADVISED that if you are a servicemember on "active duty" or "active service," or a dependent of such a servicemember, you may be entitled to certain legal rights and protections, including protection from eviction, pursuant to the Servicemembers Civil Relief Act, 50 USC App. §§ 501-596 (the "SCRA"), as amended, and possibly certain related state statutes.

Eligible service can include:

1. active duty (as defined in section 101(d)(1) of title 10, United States Code) with the Army, Navy, Air Force, Marine Corps, or Coast Guard;
2. active service with the National Guard;
3. active service as a commissioned officer of the National Oceanic and Atmospheric Administration;
4. active service as a commissioned officer of the Public Health Service; or
5. service with the forces of a nation with which the United States is allied in the prosecution of a war or military action.

Eligible service also includes any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. If you are such a servicemember, or a dependent of such a servicemember, you should contact the undersigned at (818)789-7711 to discuss your status under the SCRA.

PENAL CODE SECTION 594 STATES: EVERY PERSON WHO MALICIOUSLY DEFACES WITH PAINT OR ANY OTHER LIQUID, DAMAGES, OR DESTROYS ANY REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WILL BE PUNISHED BY FINE OR IMPRISONMENT OR BOTH.

ROSENTHAL, WITHEM & ZEFF



Dated: June 21, 2012

By: MICHAEL D. ZEFF, Attorney for Owner
US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR BEAR STEARNS ARM
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-10

RWZ FILE NO.:12-742

LAW OFFICES

ROSENTHAL, WITHEM & ZEFF

18027 VENTURA BOULEVARD, SUITE 320
ENCINO, CALIFORNIA 91438-2733

ROBERT LYNN ROSENTHAL
MICHAEL L. WITHEM
MICHAEL D. ZEFF

(818) 789-7711
Fax (818) 988-3875
www.RosenthalZeff.com

June 21, 2012

Notice to Any Renters Living at the Property

16224 Paradise Valley Court
Morgan Hill, CA 95037

The attached Notice means that your home was recently sold in foreclosure and the new owners plan to evict you.

You should talk to a lawyer NOW to see what your rights are. You may receive court papers in a few days. If your name is on the papers, it may hurt your credit if you do not respond and simply move out.

Also, if you do not respond within five days of receiving the papers, even if you are not named in the papers, you will likely lose any rights you may have. In some cases, you can respond without hurting your credit. You should ask a lawyer about it.

You may have the right to stay in your home for 90 days or longer, regardless of any deadlines stated on any attached papers. In some cases and in some cities with a "just cause for eviction law", you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

How to Get Legal Help

If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.

1. If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. If you file this form, your claim will be determined in the eviction action against the persons named in the Complaint.
3. If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address):		TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):			
NAME OF COURT: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA			
STREET ADDRESS: 301 DIANA AVENUE			
MAILING ADDRESS:			
CITY AND ZIP CODE: MORGAN HILL, CA 95037			
BRANCH NAME: SOUTH COUNTY MORGAN HILL COURTHOUSE			
PLAINTIFF: US BANK NATIONAL ASSOCIATION, ETC.			
DEFENDANT: ALFRED SILVA; AND DOES 1 TO 10, INCLUSIVE			
PREJUDGMENT CLAIM OF RIGHT TO POSSESSION			CASE NUMBER: 512CV007164
Complete this form only if ALL of these statements are true: 1. You are NOT named in the accompanying Summons and Complaint. 2. You occupied the premises on or before the date the unlawful detainer (eviction) Complaint was filed. 3. You still occupy the premises.			(To be completed by the process server) DATE OF SERVICE: (Date that this form is served or delivered, and posted, and mailed by the officer or process server)

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

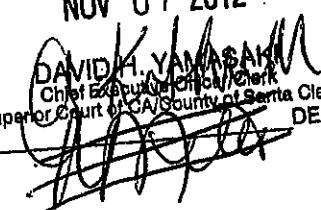
1. My name is (specify):
2. I reside at (street address, unit No., city and ZIP code):
3. The address of "the premises" subject to this claim is (address):
4. On (insert date): , the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is the court filing date on the accompanying Summons and Complaint.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of right to possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (Filing fee) I understand that I must go to the court and pay a filing of \$ _____ or file with the court the form "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file with the court the form for waiver of court fees within 10 days from the date of service on this form (excluding court holidays), I will not be entitled to make a claim of right to possession.

(Continued on reverse)

EXHIBIT C

Paul Farah
16224 Paradise Valley CT.
Morgan Hill Ca 95037
Telephone: 408-921-7736

Defendant, In Pro Per

FILED
NOV 07 2012
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA/County of Santa Clara
DEPUTY
BY 

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR BEAR STEARNS ARM
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-10

Plaintiff,

vs.

ALFREDO SILVA; and Does 1 to 10, Inclusive,

Defendants.

CASE NO.: 512CV007164

**DEFENDANT PAUL FARAH
DEMURRER TO COMPLAINT FOR
UNLAWFUL DETAINER**

Date: 12-3-2012

Time: 9:00 am

Loc.: 105

PLEASE TAKE NOTICE that on December 3, 2012, at 9:00 am or as soon thereafter as
it may be heard in Department 105 of the above-entitled court, located at 301 Diana Ave.

Morgan Hill Ca 95037. Defendant Paul Farah will present his Demurrer to Plaintiff's

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR STEARNS ARM
TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10 Complaint for
Unlawful Detainer.

The Demurrer will be based on Plaintiff's Complaint for Unlawful Detainer, the
accompanying Memorandum of Points and Authorities, the records of the Court, and such other
and further matters as the Court may consider at the hearing on the demurrer.

Dated: 11-7-2012

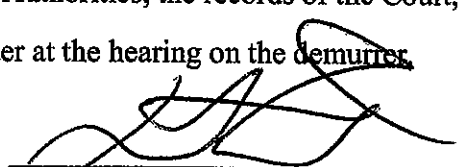

Paul Farah, Defendant

EXHIBIT D

Form NDC

UNITED STATES BANKRUPTCY COURT
Northern District of California

In Re: Paul Farah
Debtor(s)

Case No.: 12-58843 SLJ 7
Chapter: 7

ORDER AND NOTICE OF DISMISSAL
FOR FAILURE TO COMPLY

Notice is given the debtor(s) having failed to comply with this court's order filed on 12/17/2012 , it is ordered that this case is hereby **dismissed**.

Dated: 12/31/12

By the Court:

Stephen L. Johnson
United States Bankruptcy Judge

EXHIBIT E

LAW OFFICES
ROSENTHAL, WITHEM & ZEFF
16027 VENTURA BOULEVARD, SUITE 320
ENCINO, CALIFORNIA 91436-2733

(818) 789-7711
Fax (818) 986-3875

January 30, 2013

Mr. Paul Farah
16224 Paradise Valley Ct.
Morgan Hill, CA 95037

Re: US Bank National Association, etc. v. Alfred Silva
U.S. Dist. Ct. Case No: 5:13-cv-00364-PSG
Property Address: 16224 Paradise Valley, Morgan Hill, CA 95037
Loan No: 0055080782B
Our File No: 4084

Dear Mr. Farah:

It has come to my attention that you have now improperly removed the Unlawful Detainer Action to Federal Court. The removal is not timely and is not proper.

This letter follows our phone conversation, which I initiated in an effort to meet and confer with you, on January 30, 2013, at approximately 11:20 a.m., where I requested that you stipulate to allow a Remand of the Unlawful Detainer Action, which you improperly removed to Federal Court. As I indicated to you, the removal by you, unilaterally, was improper and in fact violated many statutes. You indicated to me that you would not allow the matter to be remanded back to State Court. I advised you that I was in the process of filing a Motion to Remand, and I had no choice but to do so under the circumstances.

Please call should you wish to resolve this matter. Thank you for your immediate attention.

Very truly yours,

MICHAEL L. WITHEM

MLW:ml
cc:Client

1 **CERTIFICATE OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
3 not a party to the within action; my business address is 16027 Ventura Blvd., Suite 320, Encino, CA
4 91436.

5 On January 30, 2013, I served the foregoing document, described as **NOTICE OF MOTION
6 AND MOTION TO REMAND OF PLAINTIFF US BANK NATIONAL ASSOCIATION, AS
7 TRUSTEE FOR BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH
8 CERTIFICATES, SERIES 2005-10; MEMORANDUM OF POINTS AND AUTHORITIES;
9 DECLARATION OF MICHAEL L. WITHEM** on the interested parties in this action by placing a
true copy thereof enclosed in a sealed envelope addressed as follows:

7 **DEFENDANT, in pro per**
8 **PAUL FARAH**
9 **16224 Paradise Valley Ct.**
Morgan Hill, CA 95037
Tel: 408-921-7736

10
11 **BY OVERNIGHT MAIL**

12 **(BY ELECTRONIC FILING)** I caused such document(s) to be electronically filed through
13 CM/ECF system at the United States District Court for the Central District of California, which
14 generates a Notice of Electronic Filing to all parties and constitutes service of the electronically
filed document(s) on all parties for purposes of the Federal Rules of Civil Procedure. Said
document(s) was thereby served on the following CM/ECF participants.

15 **X (BY MAIL)** I caused such envelope(s) fully prepaid to be placed in the United States Mail at
16 Encino, California. I am "readily familiar" with the firm's practice of collection and
17 processing correspondence or mailing. Under that practice it would be deposited with U.S.
18 Postal Service on that same day with postage thereon fully prepaid at Encino, California in
the ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date or postage meter date is more than one day after
date of deposit for mailing in affidavit.

19 **(BY PERSONAL SERVICE)** I caused such envelope(s) to be delivered by hand to the
20 offices of the addressee(s).

21 **(BY FACSIMILE)** I caused such document(s) to be telephonically transmitted to the offices of
22 the addressee(s)' facsimile machine as stated on the attached service list. The transmission by
facsimile was reported as complete and without error, and the transmission report shall be
attached to the original Proof of Service.

23 **JURISDICTION**

24 **X (Federal)** I declare that I am employed in the office of a member of the bar of the Court at
25 whose direction the service was made.

26 Executed on January 30, 2013, at Encino, California.

27 
28 **MARISALASKEY**